

**MEMORANDUM**

**TO:** Janel Pequignot, Ohio Department of Mental Health

**FROM:** Whitney Sullinger, Regulatory Policy Advocate

**DATE:** April 10, 2013

**RE:** **CSI Review – ODMH Provider Regulations**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

The Ohio Department of Mental Health (ODMH) submitted a rule package containing six rules on November 19, 2012. As described below, the rule package was subsequently revised to include only five rules. The final packages consists of rules 5122-27-01, 5122-25-02, 5122-29-17, 5122-29-18 and 5122-29-30 of the Ohio Administrative Code (OAC).

ODMH plans to submit a Medicaid State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) requesting approval to modify reimbursable services. Rule 5122-29-28 describes intensive home-based treatment (IHBT) as a short-term mental health service provided to children or families to prevent out of home placement or to return a child to a home, and is being amended to revise the description and activities of the service. According to ODMH, the IHBT service rule is being amended in order to allow inclusion of the service in the federal Medicaid program. The Department states that increasing the array of Medicaid-billable mental health services will help improve consumer outcomes, decrease hospitalization, and reduce out of home placements for children.

Rule 5122-29-30 lists the eligible providers and supervisors permitted to perform ODMH certified services. Currently, CMS does not recognize certain licensed individuals as eligible to provide services and bill Medicaid. The rule is being amended to include additional providers and remove providers not eligible for Medicaid reimbursement, according to ODMH.

Rule 5122-25-02 is being amended to offer providers a choice in seeking accreditation prior to applying for ODMH certification, rather than requiring them do so, as is the current practice. ODMH is proposing to align its accreditation rules with those of the Ohio Department of Alcohol and Drug Addiction Services – which makes seeking accreditation voluntary – as part of the consolidation of the two agencies. According to ODMH, this is consistent with the recommendation of the provider regulations committee that was convened to advise on matters related to the upcoming consolidation.

Rules 5122-24-01 and 5122-29-17 contain minor amendments.

ODMH initially sent the rule package to the CSI Office for review November 19, 2012. After reviewing comments and incorporating changes, the Department resubmitted the entire rule package for review a second time on January 29, 2013. Subsequent to the second notification, additional changes were made and a revised BIA was sent March 14, 2013. On April 4, 2013 ODMH informed CSI of the decision to remove rule 5122-29-29 from the package in order to revise it further and will work with the Ohio Department of Alcohol and Drug Addiction Services in the near future to make it an integrated service.

ODMH involved stakeholders throughout the rule making process and made changes along the way to address concerns. Beginning in 2011, ODMH invited a variety of interested parties via email and meetings to participate on an IHBT committee tasked with amending the service. The committee met four times and provided input that was also incorporated into the rule. ODMH continued the dialogue with stakeholders throughout the second notification period and made additional changes based on feedback. As stated by ODMH, the amendments to 5122-29-17 and -30 are based upon the input of the Ohio Board of Psychology and the Counselor, Social Worker and Marriage & Family Therapists Board. The provider committee created in 2012 to discuss the agency consolidation consisted of providers, trade associations, state government representatives and other stakeholders. The committee ultimately recommended the voluntary accreditation component of the rule amendments.

The scope of the impacted business community includes currently-certified community mental health providers as well as any new providers seeking to become certified. Certification fees range from \$180 to \$5,000. Accreditation fees are considerably higher (\$6,895- \$20,000) than

fees charged by ODMH and fees are waived for accredited providers. According to ODMH, the existing accreditation requirement creates an adverse impact and as a result the amendment to make it voluntary eliminates that impact. There will be additional staff time needed to implement the new standards and such time will differ based on expertise of employees, size of programs and number of staff. The added requirement to conduct an external review as part of the IHBT service will add an estimated cost of \$125/ hour for an eight to twelve hour review. According to ODMH, providers may alternatively partner with other providers to conduct the review for each other and the cost would consist of staff time. The Department notes there will be a salary cost increase for any agency currently utilizing a two-person team to provide IHBT. The proposed rule requires both persons to be licensed and the estimated salary difference ranges from \$1,800 to \$9,300 per year.

In summary, after reviewing the revised BIA, the CSI Office has no specific recommendations with respect to the rule or the revised BIA for the following reasons:

- The revised BIA submitted by ODMH is accurate and complete and does not raise any ongoing issues.
- ODMH involved relevant stakeholders in the development of the rule and the resulting changes are representative of the input of the interested parties.
- Generally, the rule package satisfactorily meets the standards espoused by the CSI Office.

### **Recommendations**

For the reasons explained above this office does not have any recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office